

No. SC85091

**IN THE
MISSOURI SUPREME COURT**

STATE EX REL. ROCKY LaCHANCE,

Petitioner,

vs.

**MICHAEL KEMNA, SUPERINTENDENT
AND
JEREMIAH NIXON, ATTORNEY GENERAL**

Respondents.

**Original Proceeding
Petition for Writ of Mandamus**

RESPONDENT'S STATEMENT, BRIEF AND ARGUMENT

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INDEX

TABLE OF AUTHORITIES	2
JURISDICTIONAL STATEMENT	3
STATEMENT OF FACTS	4
ARGUMENT	
The Missouri Department of Corrections correctly calculates petitioner's sentence structure	6
CONCLUSION	13
CERTIFICATE OF COMPLIANCE	14

TABLE OF AUTHORITIES

Cases

<u>State v. Johnson</u> , 864 S.W.2d 449 (Mo.App. W.D. 1993)	7
<u>State v. Young</u> , 969 S.W.2d 362 (Mo.App. E.D. 1998)	6

Other Authorities

Section 217.305 RSMo Cum. Supp. 1996	9, 10
Section 217.378 RSMo	11
Section 558.026 RSMo 2000	6
Section 558.031 RSMo 2000	9
Article V, §4 Missouri Constitution	3
Supreme Court Rule 24.03	10
Supreme Court Rule 24.035	9, 10
Supreme Court Rule 30.04	10
Supreme Court Rule 81.19	10
Supreme Court Rule 91	3, 4, 9
Supreme Court Rule 94	3

JURISDICTIONAL STATEMENT

This litigation began as an original proceeding in habeas corpus pursuant to Missouri Supreme Court Rule 91. Pursuant to the Court's April 1, 2003 Order, the litigation is now a petition for writ of mandamus. The Court issued its preliminary writ of mandamus on April 1, 2003, ordering the Missouri Department of Corrections to show cause why it should not adjust the sentences of Rocky LaChance. The Department of Corrections filed its response to the Court order on April 29, 2003, and briefing ensues.

This Court has jurisdiction under the Missouri Constitution, Article V, §4 and Missouri Supreme Court Rule 94.

STATEMENT OF FACTS

On February 10, 2003, petitioner filed a petition for writ of habeas corpus under Missouri Supreme Court Rule 91 in the Supreme Court of Missouri. On February 26, 2003, the Court requested from respondents suggestions in opposition to the petition. Those suggestions were filed by respondents on March 12, 2003. On April 1, 2003, the Court issued its alternate writ of mandamus to a non-party, the Missouri Department of Corrections, ordering it to show cause why it should not change the sentences of petitioner. The Department of Corrections filed its return on April 29, 2003, and briefing ensues.

The underlying facts that give rise to the current litigation are as follows:

On May 16, 1996, the Circuit Court for the City of St. Louis sentenced petitioner to seven years imprisonment with the Missouri Department of Corrections for first degree tampering in No. 951-2736 (Respondent's Exhibit D, p. 1; Respondent's Exhibit K, p. 3, Sequence 1). Sequences 2, 3, 4, 5 and 6 concern completed three-year sentences for stealing a motor vehicle in St. Louis City Circuit Court Case No. 961-349 (Respondent's Exhibit E; Respondent's Exhibit K, pp. 3-4). The sentences for sequences 2 through 6 were also rendered by the St. Louis City Circuit Court on May 16, 1996 (Respondent's Exhibit K, pp. 3-4; Respondent's Exhibit E, p. 1). Petitioner was represented by Quentin Wildsmith (Respondent's Exhibit D, p. 1; Respondent's Exhibit E, p. 1).

The following day, Mr. Wildsmith's representation of petitioner continued while he plead guilty to charges in the Circuit Court of St. Louis County (Petitioner's Exhibit A, p. 1). On May 17, 1996, petitioner was sentenced by the St. Louis County Circuit Court to ten

concurrent seven year terms of imprisonment for petitioner's conviction for ten counts of stealing a motor vehicle in No. 96CR-1022 (Respondent's Exhibit K, pp. 4-6, (Sequences 7-16); Respondent's Exhibit F).

In Case No. 96CR-1405, petitioner was found guilty of stealing over \$150, attempted stealing a motor vehicle and stealing a motor vehicle for which he was sentenced to terms of three years imprisonment with the Missouri Department of Corrections. Those terms run concurrently with each other but consecutively to the sentences in No. 96CR-1022 (Respondent's Exhibit K, p. 7 (Sequences 17-19); Respondent's Exhibit G).

Lastly, the sentence of seven years imprisonment with the Department of Corrections for the first degree tampering charge in No. 96-CR1602 (Sequence 20) ran concurrently with the seven-year sentence from the City of St. Louis for first degree tampering (Sequence 1) and is now complete (Respondent's Exhibit K, p. 7; Respondent's Exhibit H).

ARGUMENT

The preliminary writ of mandamus should be quashed because the Missouri Department of Corrections is correctly calculating petitioner's sentence in that petitioner is scheduled to serve his sentences as directed by the circuit courts of St. Louis City and St. Louis County in their written judgments.

In his petition for writ of habeas corpus, now his petition for writ of mandamus, petitioner requests enforcement of "the oral sentence" from the St. Louis County Circuit Court (Petition, p. 1; Petition, pp. 8-9). The written judgments of the St. Louis County Circuit Court accurately reflect to the oral judgments of the St. Louis County Circuit Court; thus, petitioner is entitled to no relief.

To support his position, petitioner refers the Court to cases like State v. Young, 969 S.W.2d 362 (Mo.App. E.D. 1998). In Young, the trial court orally sentenced petitioner to twenty years, fifteen years and fifteen years imprisonment with the sentences to run concurrently with each other. Id. at 363. By operation of law, the sentences were to run concurrently with previous sentences. Id. at 364; see §558.026.1, RSMo 2000. Accordingly, a variance arose when the written judgment indicated that the sentences were to run consecutively to previous sentences. Id. at 364.

In the present case, with the St. Louis County sentences, their relative concurrent and consecutive natures remain the same between oral pronouncement and written judgment. Similarly, the concurrent and consecutive nature of the St. Louis County sentences vis-a-vis

the St. Louis City sentences is accurately reflected in the written judgments. Petitioner can find no authority for his position in Young.

Petitioner also refers to State v. Johnson. In State v. Johnson, 864 S.W.2d 449 (Mo.App. W.D. 1993), the oral sentence did not say that the offender's sentences were to run consecutively. The written judgment reflected the consecutive nature of the sentences. Again, as noted, the written judgment from the Circuit Court of St. Louis County accurately reflects concurrent and consecutive nature of the County sentences between themselves as well as the City sentences..

At the petitioner's May 17, 1996 sentencing in the St. Louis County Circuit Court, petitioner represented to the St. Louis County Circuit Court that petitioner's sentence was three years from the St. Louis City Circuit Court (Respondent's Exhibit B ¶1). Based on the representation made to the St. Louis County Circuit Court by counsel for petitioner (Respondent's Exhibit B, ¶1), the St. Louis County Circuit Court orally described the conglomeration of sentences as thirteen years (Petitioner's Exhibit A p. 20). Petitioner argues that this aggregate sentence should be the total of petitioner's incarceration (App.Br. 9). Petitioner offers no authority for this proposition.

As noted, the St. Louis County Circuit Court orally pronounced petitioner's sentence for St. Louis County crime as seven years plus a consecutive three years (Petitioner's Exhibit A, pp. 18-19). The Circuit Court made the following statements:

Mr. LaChance, on your ten pleas of guilty to the charges of Stealing a
Motor Vehicle, all Class C felonies, in Cause No. 96CR-1022, as to all ten of

those counts I am going to sentence you to serve seven years in the custody of the Missouri Department of Corrections.

All ten of those seven-year sentences will be run concurrent one with the other.

* * * *

On your plea of guilty 96CR-1602 to the charge of Tampering First Degree, Class C felony, I am going to sentence you to serve seven years in the custody of the Missouri Department of Corrections.

That seven-year sentence will be run concurrently with the ten seven-year sentences heretofore imposed in Cause No. 96CR-1022.

[As to 96CR-1405, these] three three-year terms are to be concurrent one with the other, but to be run consecutively to the eleven seven-year sentences that I have previously imposed in Causes No. 96CR-1022, and 96CR-1602.

(Petitioner's Exhibit A, pp. 18-19). The oral intent of the St. Louis County sentencing judge is reflected in the written judgment that imposed sentences of seven years with a consecutive three years (Respondent's Exhibits F, G and H).

The St. Louis County Circuit Court did not purport to modify the sentences previously imposed by the St. Louis City Circuit Court by granting of postconviction relief under Missouri Supreme Court Rule 24.035 or state habeas relief under Missouri Supreme Court Rule 91 (Petitioner's Exhibit A, pp. 18-21). Nor did the circuit court have authority to modify a criminal sentence from another circuit court.

Petitioner seems to contend that the St. Louis County Circuit Court's erroneous oral description of the conglomeration of sentences is somehow binding. Unsurprisingly, petitioner offers no authority for that opposition (Pet. Br. 9-10). Indeed, to the contrary, the General Assembly imposes on the Missouri Department of Corrections the obligation to enforce the written judgment of the circuit court. When petitioner was received by the Missouri Department of Corrections in May 1996, §217.305, RSMo Cum.Supp. 1996 was in effect. That statute required the sheriff or other person delivering a prisoner to the Department of Corrections to bring with the prisoner to the department "a certified copy of the sentence received from the clerk of the sentencing court." Section 217.305.2(1), RSMo Cum. Supp. 1996. The department is authorized by statute to calculate sentence structure based upon the written judgment. Id.; see also §217.305.2(2), RSMo Cum.Supp. 1996. This analysis is confirmed by the language in §558.031.2 RSMo 2000. That provision requires endorsement of jail time credit upon the papers required by §217.305, RSMo. The Missouri Department of Corrections properly looks to judgment papers for the calculation of sentence. The Department of Corrections correctly calculated petitioner's sentence based upon those written sentences and judgments (Respondent's Exhibit K).

Petitioner contends that the Department of Corrections should look at a sentencing transcript in determining sentence structure (Pet.Br. 10). Petitioner does not articulate, however, how long an offender should remain at the local jail before a transcript is complete before the offender is transferred to the Missouri Department of Corrections under §217.305, RSMo. Further, petitioner's policy choice does not take into the account that

transcripts for Class C and D felonies may not be transcribed until a postconviction motion under Rule 24.035 is prepared. Missouri Supreme Court Rule 24.03(b). Of course, an offender cannot file a motion under 24.035(a) until they are delivered to the Department of Corrections. But of course, under petitioner's theory, a person should not go to the Department of Corrections until the transcript is prepared (Pet. Br. 10). This scenario becomes even more complicated with sentences following trial since preparation of the transcript during the direct appeal is substantially after the filing of the notice of appeal. Missouri Supreme Court Rules 30.04(f), 81.19(d). In any event, as noted, review of the transcript of the St. Louis County proceeding amply demonstrates that petitioner received a total of 10 years from St. Louis County that is to run consecutive with the sentences from the Circuit Court of the City of St. Louis, and that is how those sentences are calculated.

Lastly, petitioner contends that he should only have to serve a total of seven years imprisonment according to the written judgment in 96CR-1602. In pertinent part, that judgment states:

The Defendant having no legal cause to show why judgment and sentence of this Court should not now be pronounced, the Defendant is sentenced to serve a term of imprisonment of (7) Year(s) in the custody of the Department of Corrections for the offense(s) Count 1; concurrent with sentence imposed in cause numbers 96CR-1408, 96CR-1405, 96CR-1022, 961-0349, and 951-2736.

The Defendant is to be placed in the Regimented Discipline Program under the

provisions of §217.378 RSMo – with the consideration of the Defendant's possible release within (120) Days.

Therefore, it is ordered and adjudged by the Court that said Defendant be and is hereby committed to the custody of the Department of Corrections, for a period of imprisonment of (7) Year(s) for the offense(s), Count 1; concurrent with sentence imposed in cause numbers 96CR-1408, 96CR-1405, 96CR-1022, 961-0349, and 951-2736.

(Respondent's Exhibit H, p. 1). That judgment and sentence states that the seven-year sentence in No. 96CR-1602 ran concurrently with the seven-year sentence of first degree tampering from St. Louis City in No. 951-2736 (Respondent's Exhibit H). The Department of Corrections is following the written judgment concerning the concurrent nature of sentences in Nos. 96CR-1602 and 951-2736; thus, petitioner has completed the seven-year sentence in No. 96CR-1602. The written judgment in No. 96CR-1602 speaks only to the concurrent nature of the seven-year sentence in No. 96CR-1602 (Respondent's Exhibit H). The concurrent and consecutive nature of the other sentences is provided by the other judgments (Respondent's Exhibit F, G).

CONCLUSION

For the foregoing reasons, respondent prays the Court deny petitioner's request issue a writ of mandamus to the Missouri Department of Corrections.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND SERVICE:

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 2,271 words, excluding the cover, this certification and the appendix, as determined by WordPerfect 9 software; and

2. That the floppy disk filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and

3. That a true and correct copy of the attached brief, and a floppy disk containing a copy of this brief, were mailed, postage prepaid, this ___ day of June, 2003, to:

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